

Applicants : Calvin Kooistra and Dan W. Hickey  
 Serial No. : 10/808,128  
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REMARKS

Applicants acknowledge the Examiner's review of the specification, claims, and drawings. In light of the above amendments and following remarks, Applicants respectfully request reconsideration of the present application. The amendments and remarks presented herein are fully supported by the application as originally filed. No new matter has been entered.

STATUS OF THE CLAIMS:

Claims 1-22 are pending in the application.

INFORMATION DISCLOSURE STATEMENT:

Applicants respectfully note that the Information Disclosure Statement filed July 26, 2004, has not been initialed and returned to the Applicants. A copy of the Information Disclosure Statement is enclosed herein for the Examiner's reference. Applicants request that the 1449 form be initialed and return to Applicants with the next action.

CLAIM REJECTIONS UNDER 35 U.S.C. § 112:

The Examiner rejects Claims 14-20 under 37 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Applicants have amended Claim 14 to change "a generally horizontal fixed pivot axis" to "a generally horizontally fixed vertical pivot axis". Applicants refer the Examiner to page 4 of the specification and FIGS. 1 and 2. The "generally horizontally fixed vertical pivot axis" refers to vertical pivot axis 36 and the fact that it is generally fixed in the horizontal direction.

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Applicants respectfully submit that this amendment should clarify the claim language and, therefore, respectfully request reconsideration and withdrawal of the 35 U.S.C. § 112 rejection of the claims.

CLAIM REJECTIONS UNDER 35 U.S.C. § 102:

The Examiner rejects Claims 1 and 14 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,958,301 to Janci.

Applicants respectfully traverse. "A claim is anticipated if only each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Moreover, "the identical invention must be shown in as complete detail as is contained in the claim". Richardson v. Suzuki Motor Co., 868 F.2d 1226, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989).

With reference to Claim 1, Janci does not disclose or suggest a fence latch mechanism that permits swinging of a gate in a first direction and preventing swinging of the gate in a direction opposite from the first direction. In contrast, Janci is directed to a conventional gravity hinge that permits swinging in both directions. Therefore, Janci does not disclose the claimed combination. Notwithstanding, Applicants have amended Claim 1 to more clearly define Applicants' invention which now calls for:

A fence latch mechanism:  
 a base member for mounting to a post, said base member having a post mounting member and a flange, said post mounting member for straddling the post and having mounting openings;  
 a fastener extending through said mounting openings for mounting said post mounting member to the post;  
 said flange extending from said post mounting member and having a lateral extent extending transversely with

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respect to said post mounting member and for extending transversely with respect to the post; and

a hook member having a gate mounting member for mounting to a gate, said hook member engaging said flange of said base member for latching the gate to the post, said hook member including first and second tines depending from said gate mounting member, said flange of said base member having a first opening with a closed perimeter receiving and retaining one of said first and second tines in said flange and a second slotted opening for receiving the other one of said first and second tines wherein said slotted opening permits the gate to swing about the post in a first direction about said slotted opening while the first opening limits swinging of the gate in a second direction opposed from the first direction and said first opening prevents swinging of the gate about said other of said first and second tines wherein the gate can swing in one direction only.

Applicants respectfully urge that Janci does not disclose or suggest the claimed combination. As noted above, Janci is directed to a conventional gravity hinge, which permits swinging in both directions. Further, Janci does not disclose or suggest a fence latch mechanism with a flange and a hook member, with the flange having a first opening with a closed perimeter receiving and retaining one of the tines of the hook member in the flange and a second slotted opening for receiving the other of the tines of the hook member wherein the gate can swing in one direction only. Therefore, Applicants respectfully urge that Claim 1 is patentably distinguishable over Janci alone or in view of any other reference of record.

With respect to Claim 14, Janci does not disclose or suggest a fence latch mechanism that permits swinging of a gate about a post in a first direction from a first position about a generally horizontally fixed vertical pivot axis but does not permit the gate to swing about the post from the first position in a second direction opposed from the first direction. As noted above, in contrast, Janci is directed to a conventional gravity hinge that permits swinging in both directions.

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Claim 14 has been amended as noted above to clarify that the hook member is pivotal about a generally horizontally fixed vertical pivot axis in the flange.

14. A fence latch mechanism:  
 a base member for mounting to a post, said base member having a post mounting member and a flange, said post mounting member for mounting said base member to the post, and said post mounting member having a central axis;  
 said flange extending from said post mounting member and having a lateral extent extending transversely with respect to said post mounting member and outwardly from said central axis;  
 a hook member for mounting to a gate, said hook member engaging said flange for latching the gate to the post, said hook member pivotal about a generally horizontally fixed vertical pivot axis in said flange, said fixed vertical pivot axis offset from said central axis wherein the gate can swing about the post in a first direction from a first position about said vertical pivot axis but cannot swing about the post from said first position in a second direction opposed from the first direction.

Applicants respectfully urge that Janci does not disclose or suggest the claimed combination. In contrast, Janci is directed to a gravity hinge that allows pivoting in either direction. Applicants respectfully urge that Janci does not disclose or suggest a fence latch mechanism with a flange and a hook member, with the hook member pivotal about a generally horizontally fixed vertical pivot axis in the flange, with the vertical pivot axis offset from the central axis of the post mounting member wherein the gate can swing about the post in a first direction from a first position about the vertical pivot axis but cannot swing about the post from the first position in a second direction opposed from the first direction. Furthermore, Applicants respectfully note that it would not be obvious to modify Janci to meet the claimed combination, since such a modification would change the principal operational of the Janci device, which is to provide a gravity hinge that enables a door to

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swing from an open position out of the plane of the door frame in either direction. Therefore, any such proposed modification would not be obvious.

Applicants therefore urge that Claims 1 and 14 and their respective dependent claims, namely Claims 2-13 and 15-20, are allowable over the prior art of record. Furthermore, Applicants have added additional dependent claims, namely Claims 21 and 22, to call for further aspects of the invention.

**CLAIM REJECTIONS UNDER 35 U.S.C. § 103:**

The Examiner rejects Claims 2-13 and 15-20 under 35 U.S.C. § 103(a) as being unpatentable over Janci.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference or references when combined must teach or suggest all the claimed limitations. The teaching or suggestion to make the claim combination and reasonable expectation of success must both be found in the prior art and not based on Applicant's disclosure. In re Vaack, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). See MPEP § 2143.

Claims 2-13 and 15-20 depend from Claims 1 and 14, respectively. Therefore, Applicants respectfully submit that Claims 2-13 and 15-20 are patentably distinguishable for at least the reasons set forth above. Further, it would not be obvious to modify Janci to meet the claimed combination because such as proposed modification would change the operation of the Janci hinge—that is to swing into and out of the plane of the door frame. Where a

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proposed modification of the prior art would change the principle of operation of the prior art, then the teachings of the references are not sufficient to render the claims prima facie obvious. In re Ratti, 270 F.2d 810, 123 U.S.P.Q 349 (CCPA 1959).

In light of the above amendments and remarks, Applicants respectfully request reconsideration of the present application and a Notice of Allowance of all claims, namely Claims 1-22.


Should the Examiner have any questions or suggestions, he is invited to contact the undersigned at (616) 975-5506 or at [collins@vglb.com](mailto:collins@vglb.com).

Respectfully submitted,

By: Van Dyke, Gardner, Linn & Burkhart, LLP

CALVIN KOOISTRA AND DAN W. HICKEY

September 6, 2005  
Date

  
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Calvin Kooistra and Dan W. Hickey  
Serial No. : 10/808,128  
Filed : March 24, 2004  
For : FENCE LATCH MECHANISM

Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

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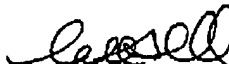
Dear Sir:

CERTIFICATE OF MAIL

I certify that the attached return postcard, Information Disclosure Statement,  
PTO-1449 Form, and copy of information referenced herein are being deposited with the  
United States Postal Service as first class mail in an envelope addressed to:

Commissioner for Patents  
P.O. Box 1450  
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on July 26, 2004.

  
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Alexandria VA 22313-1450

Dear Sir:

INFORMATION DISCLOSURE STATEMENT

In accordance with 37 CFR 1.51, 1.56, 1.97 and 1.98, Applicants submit herewith patents, publications or other information listed on attached Form PTO-1449 for consideration by the Examiner in connection with examination of the present application.

This Information Disclosure Statement is being filed: (a) within three months of the filing date of the national application; (b) within three months of the date of entry of the national stage as set forth in 37 CFR § 1.491 in the corresponding international application; or (c) before the Applicants are aware of any mailing date of a first Office Action on the merits, whichever occurs last.

This Information Disclosure Statement is not intended to constitute an admission that any patent, publication or other information referred to herein is "prior art" for this invention unless specifically designated as such.

Under 37 CFR 1.97(h), the filing of this Information Disclosure Statement shall not be construed to mean that a search has been made or that no other material information as defined in 37 CFR 1.56(a) exists.



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An early and favorable action on the merits is respectfully requested.

Respectfully submitted,

CALVIN KOOISTRA AND DAN W. HICKEY

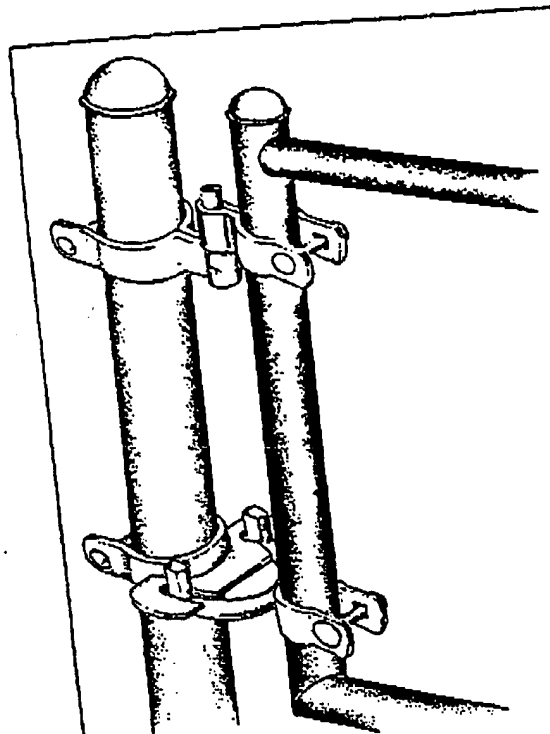
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## SELF-CLOSING HINGE SET (Gravity Type)

- self closing
- self rising
- compatible with auto-latch
- will allow gate to swing both ways
- adjustable closing power
- available for 1 1/2", 1 3/4", or 2" O.D. gate frame and 2", 2 1/2" or 3" gate post.

The gravity type self closing hinge set has no springs to wear out. By raising the bottom hinge set you can increase the force at which the gate will close. The hinges can also be used to compensate for slight grade changes making it possible to install the gate on a hill, yet keep the bottom of the gate close to the ground.

DAC Industries, Inc. / Grand Rapids, Michigan